RECENT AMERICAN DECISIONS.

In the Supreme Court of the State of Wisconsin. May 15, 1862.

TODD *vs.* LYDIA A. AND FRANCIS C. LEE.

WRIGHT *et als. vs.* THE SAME.

JUFFRAYS *vs.* THE SAME.

TAYLOR *et al. vs.* THE SAME.

FARIES *vs.* THE SAME.

1. The contracts of a *feme covert*, when necessary or convenient to the proper use and enjoyment of her separate estate by virtue of the enabling statutes (secs. 1, 2, and 3, R. S. Wis. 1858[1]), are binding upon the estate at law. (*Conway* vs. *Smith*, 13 Wis.)
2. All her other engagements stand as before, good only in equity. (The case of *Yale* vs. *Dederer*, 22 N. Y. 450, considered and disapproved; s. c., 18 N. Y. 265, approved.)
3. The change from an equitable to a legal estate, has not, with respect to her general engagements, enlarged her powers or removed the disability of coverture, but she remains as if still possessed of an estate in equity without restriction as to the *jus disponendi*, capable of charging it with debts incurred for her own benefit or the benefit of her estate, to its full extent, and such charge may be enforced in a civil action under the Code of Procedure.
4. The action should be *in rem* not *in personam*, for she is incapable of charging herself *personally* either in equity or at law.

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[1] CHAPTER XCV.

OF THE RIGHTS OF MARRIED WOMEN.

SECTION 1. The real estate, and the rents, issues, and profits thereof, of any female now married, shall not be subject to the disposal of her husband, but shall be her sole and separate property, as if she were a single female.

SECTION 2. The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues, and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property.

SECTION 3. Any married female may receive by inheritance, or by gift, grant, devise, or bequest, from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property, and any interest or estate therein, and the rents, issues, and profits, in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband, nor be liable for his debts.

5. Injunctions and receivers in such actions may be had to preserve the property during the pendency of the suits, and to convert the property and satisfy the debts, for want of other process, after judgment.
6. The husband is a proper party, but no personal demand can be made against him in such cases. At common law the personalty of the wife rests absolutely in the husband, and although he may be liable for her debts upon the principles of agency, yet, even under the Code of Procedure, to bind him or his property, a separate action at law must be brought. This common law rule has no application in such cases in equity; and whether he is liable or not is a question of fact for the jury.[1]
7. L., a *feme covert*, the owner of a separate estate under the enabling statute, with her husband's permission, upon the faith and credit of her separate estate, purchased goods and hired a store, and engaged in trade as if she were *sole*. She failed to pay for the rent, and refused to pay for the goods, because of coverture. In actions brought to charge the rent and price of the goods upon her separate estate, and to apply the goods left to liquidate the claims in suit, *Held*, That as it is an established rule in equity that a *feme covert* may, with her husband's permission, given even after marriage, become a *sole trader*, and hold the profits arising out of her business to her sole and separate use, so equity, in consideration of the benefit thus accruing to her separate property, will charge the debts properly incurred in trade upon it, and apply both her separate property and stock in trade to their payment, through a receiver.

These were actions under the Code of Procedure, brought to charge the married woman defendant's separate property, held under the enabling statute of 1850 (R. S. Wis. c. 95, secs. 1, 2, and 3), with the payment of debts incurred by her in separate trade, and to reach the capital invested in the business. They were commenced before the County Court for Milwaukee county; the first three entitled suits were removed to the Circuit Court for that county, where the orders granting injunctions and a receiver, which had been obtained in the County Court, to restrain the dissipation of the property and preserve it during the litigation, were vacated. From the orders dissolving the injunctions and vacating the order appointing the receiver, the plaintiffs appealed. The last two entitled suits were sent to the Circuit Court for Dane county, where, upon the hearing, they were dismissed, and judgments for costs given against the plaintiffs, from which they appealed.

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[1] *Oxnard* vs. *Seaton*, 39 Maine 119; Id. 125; *Burger* vs. *White*, 2 Bosw. Sup. Ct. 92.

The questions involved were nearly identical in all the cases, and are disposed of together.

By the Court. DIXON, C. J.—Before the case of *Yale* vs. *Dederer*, 22 N. Y. 450, it was well settled in New York, if, in fact, anything can ever be said to be settled in that state, *that a married woman having a separate estate might bind it, by her general engagements to pay debts contracted for the benefit of such estate, or on her own account, or for her benefit upon the credit of it. Metho. Epis. Church* vs. *Jaques*, 3 Johns. Ch. 77; S. C., in Court of Errors, 17 Johns. 548; *North American Coal Co.* vs. *Dyett*, 7 Paige 9; S. C., in Court of Errors, 20 Wend. 570; *Gardner* vs. *Gardner*, 7 Paige 112; S. C., in Court of Errors, 22 Wend. 526; *Curtis* vs. *Engel*, 2 Sanf. Ch. 287; *Yale* vs. *Dederer*, 18 N. Y. 265.

In England a broader doctrine prevails. It has been decided that she may not only bind her separate property by a general engagement, written or parol, for her own benefit, or that of her estate (*Murray* vs. *Barlee*, 3 M. & K. 209; *Owens* vs. *Dickenson*, 1 Cr. & Ph. 48), but that she can do so by the execution of a bond as surety for her husband (2 Atk. 69; 1 Bro. C. C. 16): and for a stranger even (15 Vesey 596).

In Kentucky her separate estate has been charged with the payment of a note executed as surety for her son, and parol evidence of her declaration, made at the time of executing it, that she would not pay it, and her separate property should not go for that purpose, was excluded (7 B. Mon. 293).

The courts of New York, however, have held to a narrower rule, and she has been restricted within the limits above stated.

The rule given by SPENCER, C. J., 17 Johns., and COWEN, J., in 20 Wend., is indeed somewhat less stringent, and accords more nearly with the English decisions. SPENCER, C. J., says: "I am entirely satisfied that the established rule in equity is, that when a *feme covert*, having separate property, enters into an agreement, and sufficiently indicates her intention to affect by it her separate estate, when there is no fraud or unfair advantage taken of her, a

Court of Equity will apply it to the satisfaction of such engagement. Judge COWEN states it thus: "When her separate estate is completely distinct, and, as here, independent of her husband, she seems to be regarded in equity as respects her power to dispose of or charge it with debts, to all intents and purposes as a *feme sole*, except in so far as she may be expressly limited in her powers by the instrument under which she takes her interest."

"The *feme covert*," says Chancellor WALWORTH, in *North American Coal Co.* vs. *Dyett*, 7 Paige 9, "is as to her separate estate considered a *feme sole*, and may, in person or by her legally authorized agent, bind such separate estate with the payment of debts contracted for the benefit of that estate, or for her own benefit upon the credit of the separate estate." And again, in *Gardner* vs. *Gardner:* "So far as that estate is concerned, she is considered a *feme sole;* and the estate is answerable for money borrowed by her or her trustee for the benefit of such estate, although the husband is the lender."

In the same case, in 22 Wend., Judge COWEN uses these words: "If the wife holds an estate separate from and independent of her husband, as she may do in equity, chancery considers her in respect to her power over this estate a *feme sole;* and although she is still incapable of charging herself at law, and equally incapable in equity of charging herself personally with debts, yet I think the better opinion is, that separate debts, contracted by her expressly on her own account, shall in all cases be considered an appointment or appropriation for the benefit of the creditors as to so much of her separate estate as is sufficient to pay the debt, if she be not disabled to charge it by the terms of the donation." The Vice-Chancellor reports the rule in 2 Sandf. Ch., by saying that the complainants, "in order to sustain their suit, must show that the debt was contracted either *for the benefit of her separate estate, or for her own benefit upon the credit of the separate estate.*"

The rule as last laid down, is fully and explicitly sanctioned by the two judges delivering opinions in *Yale* vs. *Dederer*, 18 N. Y. The case there turned on the ground that the liability of a surety is *stricti juris*, and equity will not grant relief where there is no

obligation at law. *Mrs. Dederer* signed the note as surety for her husband. At law the note was void. She had executed no instrument creating a specific lien on her separate estate which would have been legally binding in case she had been a *feme sole*. In equity it was a mere general engagement, which could only be enforced upon principles of exact justice, and because it was against conscience for her to refuse payment. This element was entirely wanting. It was clearly not the case of a debt contracted on her own account, for her own benefit, or for the benefit of her estate. This is Judge COMSTOCK'S position. Judge HARRIS'S is substantially the same, though he treats it more as a question of evidence. He holds that the fact of her engaging generally in conjunction with her husband to pay money, is not sufficient evidence of an intention to charge her separate estate, that the presumption is the debt is that of the husband, and unless the contrary be shown the claim must be denied.

The contracts of a married woman, when necessary or convenient to the proper use and enjoyment of her separate estate, are binding at law. *Conway* vs. *Smith*, 13 Wis.

All her other engagements stand as before the passage of the statutes, good only in equity. The change from an equitable to a legal estate has not, with respect to them, enlarged her powers or removed the disability of coverture, but she remains as if still possessed of an estate in equity, without restriction as to the power of disposition. Idem *Wooster* vs. *Northrups*, 5 Wis. 245; *Yale* vs. *Dederer*, 18 N. Y. 265.

The debts in question belong to the latter class. Within all the authorities, the separate estate of a married woman will be charged in equity with the payment of debts contracted for her benefit. In this case we need not inquire further, for that the debts in question were beneficial to Mrs. Lee will readily appear. With the acknowledged consent and approbation of her husband, she engaged in business as a sole trader, the profits to be appropriated to her separate and exclusive use. She contracted these debts in the prosecution of that business. It is an established rule in such cases, that the earnings of a trade thus carried on will in equity

be deemed her separate property, and that she will be protected in its use as against her husband, though not his creditors. 2 Story's Eq. Juris., § 1387; 2 Roper on Husband and Wife (30 Law Lib.), 171–2; *Slanning* vs. *Style*, 3 P. Wms. 334; *Megrath* vs. *Robertson*, 1 Dess. 445; *Freeman* vs. *Orser*, 5 Duer 476; *Burger* vs. *White*, 2 Bosw. 92, 96, 99; 2 Ind. Eq. 553. See also *Gore* vs. *Knight*, 2 Vernon 535; *Gage* vs. *Lester*, 2 Bro. Cases Parl. 4. This is a sufficient consideration of benefit to charge her property with the payment of debts incurred in the business. If the agreement for a separate trade be by articles before marriage, without trustees, or if after, and founded upon a valuable consideration, the income and profits will be supported for her separate use against her husband and his creditors. But if after marriage he merely permit her to conduct business on her separate account, the earnings will be protected only as against him. Story's Eq., *supra*. In such cases a Court of Equity will make him a trustee for her separate use, and compel him to account to her or her creditors for the profits which may come to his hands. Roper on Husband and Wife, *supra*. But while the beneficial interests of the wife is thus recognised and enforced in equity, her condition at law is very different. There the profits as well as the capital employed are the husband's, there being no trustees, no obstacle to interfere between the rule of law which vests in him all the wife's personal property accruing to her during the marriage, and her equitable title to it as her separate estate under the permission of her husband. Roper, *supra*. And he is also, upon the ground of his presumed authority to her, bound by her transactions in the trade, and responsible for the debts. Idem. This answers many of the authorities cited by respondent's counsel, and shows them inapplicable. They were cases at law in which property thus employed was held liable to seizure and sale to satisfy the husband's debts. They prove nothing here; these are proceedings in equity to charge the separate estate, on the faith of which the credits were given; and if it is admitted that the goods when purchased might have been taken for *Mr. Lee's* debts, that does not

affect the decision. It was one of the hazards to be considered by *Mrs. Lee* before embarking in the enterprise.

The great length to which the common law goes in denying the separate rights of the wife, is illustrated by the following cases:—

The property in wearing apparel, bought for herself, by a wife living with her husband, out of money settled to her separate use before marriage, and paid to her by the trustees of the settlement, vests by law in the husband, and it is liable to be taken in execution for his debts. *Carne* vs. *Brice*, 7 M. & W. 183.

A husband and wife separated by agreement (not under seal), and at that time he agreed to allow her a certain sum weekly for her support, which was paid; and she saved a portion of her allowance and invested it in stock, and disposed of the proceeds by way of *gift*. *Held*, That the husband was entitled to recover back the money so given in an action for money lent against the person who received it. *Messenger* vs. *Clarke*, 5 Exchequer 388.

A married woman deposited with the defendant the savings of certain rents of leasehold property, which had on her marriage been conveyed by her, with the consent of her intended husband, to trustees, upon trust to pay or permit her to receive the rents, &c., to her sole and separate use. *Held*, That the trust being discharged on the rents coming to the wife's hands, the trustee ceased to have any interest in or control over them; and that, upon the wife's death, her husband was entitled to bring an action in his own right to recover the money so deposited. *Bird* vs. *Peagrum*, 76 E. C. L. 638.

How far the introduction of legal instead of equitable estates, and the authority of the wife at law to hold and dispose of personal property which comes to her as separate estate, may be considered *in equity* as having relaxed this strict rule of the common law, so as to enable that Court to protect her against the demands of the husband's creditors in cases like these, where her separate legal estate is absorbed in the trade, or whether they have affected it at all, need not here be examined. No claim on the part of *Mr. Lee's* creditors (if there be any) has been interposed, and it is now too late for them to proceed. Nor need we inquire how far equity

would interfere in behalf of her creditors against his, since the former by superior diligence have acquired actual precedence. The moral force of a rule which would assist them to the products of a business, built up by their indulgence, would appear to be almost irresistible.

Neither are we to investigate *Mr. Lee's* personal liability. No demand for personal judgment is made against him. Nor does it seem there could be. As a trustee in equity, he is a proper party, but his personal liability, whatever it is, is legal, and must be enforced at law. The husband is liable upon the contracts of the wife only upon the principles of agency—that he has authorized her either expressly or by implication to bind him—the general rule being that she has no such power (1 Macqueen on Husband and Wife 131 (57 Law Lib. 93); *Freestone* vs. *Butcher*, 9 C. & P. 643 (38 E. C. L. 269); *Lane* vs. *Ironmonger*, 13 M. & W. 368); and whether she was authorized or not is a question of fact for the jury. Idem. In determining it, many circumstances are to be considered, as whether the contracts are extravagant (*Lane* vs. *Ironmonger, supra*), whether the husband having control of the goods does not cause them to be returned (*Waithorn* vs. *Wakefield*, 1 Cowp. 120), and whether the credit was not given solely to the wife, when it is said the husband will in no case be liable. *Freestone* vs. *Butcher, supra; Bentley* vs. *Griffin*, 5 Taunt. 356; 1 E. C. L. 131; *Metcalf* vs. *Shaw*, 3 Camp. 22. Mr. Roper thinks that whenever the wife is to be considered as acting as a *feme sole*, and entitled to the profits of her separate trade, as her sole and separate estate, the husband will not be liable, *in equity*, to her engagements contracted in it; that the creditor cannot complain, since he trusted to *her* credit only, and it would be unjust to subject him to her debts, when he is not entitled to any of the profits; and that a Court of equity will interfere to prevent the prosecution of the legal right, and at the same time subject the funds in the trade to the demands of her creditors. 2 Roper 174. But these positions are doubted by Mr. Jacob and Mr. Bright (2 Bright's Husband and Wife 301), and seem never to have been adjudicated.

The issuing of the injunctions and appointment of the receiver in these cases, was under the circumstances undoubtedly correct. They take the place of the process of attachment when necessary and proper at law. Such was the practice under the former system in equity, when there were no trustees of the separate estate, and the fund was in danger of being wasted or put beyond the reach of creditors. It was the course pursued in *Lilia* vs. *Airey*, 1 Vesey 277, and in *Meth. Epis. Church* vs. *Jaques*, 1 Johns. Ch. 450. And instances of an injunction where there were trustees are very numerous.

It follows from these views that orders dissolving the injunctions, and vacating the orders appointing a receiver in the first three entitled cases, and the judgments in the last two, must be reversed, and that all must be remanded for further proceedings according to law.

Orders and judgments reversed, and cases remanded.

We have, reluctantly, felt compelled to omit that portion of the opinion of Mr. Ch. J. DIXON, in which he gives a very elaborate and thorough review of the opinion of the New York Court of Appeals, in Yale *vs.* Dederer, 22 N. Y. R. 450. This we have done on account of the very great length to which the opinion would otherwise have extended. That portion of the opinion, forming more than one-half of the whole, not being essential to the authority of the case, although of marked interest and ability, we have therefore omitted.

After so thorough a review of the cases and so exhaustive a discussion of the principles of equity, involved in the question decided by this case, we should not feel justified in occupying much more space in regard to them. But some few cases have been decided, later than the published Reports, at the date of the opinion in that case, to which it may be of interest to refer. We have, through the courtesy of the reporter, been permitted to see the opinion of the Court, in the case of Willard *vs.* Eastham, 15 Gray, soon to be published, wherein the S. J. Court of Massachusetts held that the promissory note of a married woman (having separate estate), given by way of accommodation, as surety for another, not her husband, will not bind her separate estate, either the corpus of the property or the rents, issues, and profits, unless there is distinct evidence, from the contract itself, that such was her intention, or that the contract was upon the credit of such estate. The Court here thus state the English law: "The result of the English decisions would therefore seem to be, that the separate estate of a married woman is answerable, for all her debts and engagements, to the full extent to which it is subject to her own disposal." And this seems to us to be a very accurate statement, in all respects, so far as that point is concerned. For, upon examination of the English cases upon this question,

and they are quite numerous, it will be perceived, that a large number of them turn upon the point, how far the property was under the *disposal* of the feme covert.

The leading American case of The Methodist Episcopal Church *vs.* Jaques, 3 Johns. Ch. R. 77–121, where Chancellor KENT occupied so much space in reviewing and criticising the English cases, turns entirely upon the point, whether, by the deed of settlement, the married woman had the power to charge her separate estate, by all her engagements, in whatever form. And all the discussion in the English cases upon the question how far the contract is a good execution of the power of the wife over her separate property, according to the fair construction of the terms of the settlement, turns upon the same point: which we shall see is finally abandoned by the English Courts as untenable.

This question has been made the turning point in a very large proportion of the English cases. For the relatives and friends of married women, in attempting to make provision for their support, independently of the husband's resources, after the Equity Courts had determined that they had the same general power over their separate property, as femes sole, found it indispensable, in order to relieve wives from the power and importunity of husbands, to fetter the disposition of the wife's property with every clog and embarrassment, which would still leave it available for their own maintenance. Such a clause is often inserted to prevent the wife anticipating, or alienating, the income of her separate property. This was said to have been first done by the advice of Lord THURLOW, who was one of the trustees, in the case of Miss Walton. See Pybus *vs.* Smith, 3 Br. C. C. 347; Parkes *vs.* White, 11 Vesey 221; Jackson *vs.* Hobhouse, 2 Mer. R. 487; Lord COTTENHAM, Chancellor, in Rennie *vs.* Ritchie, 12 C. & F. 234. We are not aware that any well considered case has ever attempted to evade any restrictions upon alienation inserted in the deed of settlement. It is certain no such course of decision could be justified. It is clear, however, that this point is not the one upon which this case turns.

For it is obvious, that where Equity holds married women as having the same general power of disposing of their separate estate, as if they were sole, it is not easy to comprehend the ground upon which any distinction can be made, in principle, between debts evidenced by an express undertaking to charge the separate property, and those which are not; or between debts of suretyship and those where the consideration goes to the feme covert, or for the benefit of her separate estate, *so far as her intention to charge her separate estate is concerned.* If the promissor have no means of meeting an undertaking, except her separate estate, and could not bind herself personally, the conclusion seems irresistible, that if she contracts in good faith, she does intend to bind her separate property. It seems to us, therefore, that the American cases, among which we may name Yale *vs.* Dederer, 18 N. Y. Court of Appeals R. 265, S. C. 22 Id. 450, Willard *vs.* Eastham, *supra*, and many others, referred to in 1 Lead. Cas. in Eq. 427, Hare & Wallace's Am. Note, which have held that the promissory note of a married woman, for the accommodation of one not her husband, will not, *prima facie*, bind her separate estate, in equity; but that such contract will so bind her separate estate, if it appear, as some of the cases hold, from the contract itself, and as others hold, either from the contract or *aliunde*, that such was her intention, at the time of entering into the contract, do not rest upon any satisfactory prin-

ciple. We can comprehend the import, and the reasonableness, of such a rule when it is made universal, as a restriction upon the power of married women in regard to the disposition of their separate estates. We would not dissent from a legislative restriction, prohibiting married women from binding themselves (as they are now allowed to do, personally, in many of the states, as to contracts generally), or their separate property, *for any contract of suretyship.* Such a restriction, as to the husband, would certainly be judicious. It may be questionable whether the Courts could, with much show of reason, now adopt such a rule, but the legislature might do it. But the American Courts, in attempting to discriminate between the presumption of intention to charge the separate estate, where the contract is one of suretyship, and where it is one for the benefit of the feme, or of her separate estate, and holding that such presumption will not arise from the contract itself, in the former case, but that it will, in the latter, seem to us, to have manifested more sense of justice and indulgence towards the interest of the feme, than of tenderness in regard to the implications affecting her good faith, growing out of the reasons which they urge for the distinction. For it seems to be difficult to raise any distinction in regard to her intention to charge her separate estate, which will not finally implicate her in positive bad faith towards the person with whom she was contracting.

And the Court, in Willard *vs.* Eastham, feeling the force of this implication doubtless, has placed the case upon the ground that a contract of suretyship, being, *prima facie*, neither for the benefit of the feme, or her estate, cannot be made a charge upon her separate estate, unless by her express contract. And where the contract is in writing, this provision must form part of the writing, of course. This makes the decision more consistent with reason and with fact than those are, where a distinction is attempted to be made between the presumption of intention on her part in regard to charging her separate estate, when the contract is for her own benefit, or that of her estate, and when it is not.

It would be quite impossible to give any intelligible view of the American law upon this question, within any such limits as are allowed us here. It has seemed to us, that in those particulars in which the American Courts have departed from the rules of equity recognised in the English Courts, it has rather tended to make the law convenient and agreeable, than rational or consistent in itself.

1. The American Courts have required that in the deed or conveyance of the estate to the separate use of a married woman, it should expressly appear that she had power to charge the same by a given form of contract, in order to make such contract a charge upon such estate. Ewing *vs.* Smith, 3 Dessaus. 417; Trustees of Frazier *vs.* Center, 1 McCord's Ch. R. 270; Magwood *vs.* Johnson, 1 Hill C. R. 228; Robinson *vs.* Ex'ors of Dart, Dudley's Eq. 128; Reid *vs.* Lamar, 1 Strobh. Eq. R. 27.

In New York, Chancellor KENT condemned the English rule; Meth. Episc. Ch. *vs.* Jaques, *supra*; but his decision was reversed, 17 Johns. R. 548; and the New York Courts, through a long course of years, were understood to have recognised fully the English rule upon this point: That, where no restriction was placed upon the power of alienation, the Courts would not create any by implication. But that ground is certainly very essentially shaken in the opinion of Mr. Justice SELDEN, in Yale *vs.* Dede-

rer, 22 N. Y. Rep. 450. And the Courts in Pennsylvania seem to have adopted somewhat similar grounds. All this certainly shows very manifest dissatisfaction with the English rule, and an increasing disposition to protect the property of married women. And as married women have no power, by the common law, to make a contract personally binding, and it is only through the aid of Courts of Equity that such contracts can be made a charge upon their separate estate, it is to be expected that those Courts would affix such conditions to the relief granted, as they deemed requisite for the protection of the rights of those who are under their protection, in some sense. We only regret that there should be so much conflict between the English and American cases upon this point, when there seems so slight ground for departing from the English rule, as at present held.

2. This whole idea of regarding the estate of the wife in her separate property, as in the nature of a trust for her support, and that she can only charge it by virtue of a power given her for that purpose, which has led to so much discussion and confusion, both in England and this country, is a mere fiction, and as such has been formally and entirely abandoned in England within the last year. Johnson *vs.* Gallagher, 7 London Jur. N. S. 273 (March 1861). Lord Justice TURNER there said, "The doctrine of appointment, however, seems to me to be exploded by Owens *vs.* Dickinson, 1 Cr. & Ph. 48. A Court of Equity having created the separate estate, has enabled a married woman to contract debts in respect of it. Her person cannot be made liable either at law or in equity, but in equity her property may. This Court, therefore, as I conceive, gives execution against the property, just as a Court of law gives execution against the property of other debtors." * * "The evidence, I think, shows that the tradesmen who supplied the goods supposed and believed that she had separate estate, and dealt with her on that assumption. So far, therefore, as they were concerned, they dealt on the footing of a separate estate. How was it, then, on the part of the defendant? She was, as I have said, living separate from her husband, and had separate estate; and I think that when, under such circumstances, a married woman contracts debts, the Court is bound to impute to her the intention to deal with her separate property, unless the contrary is clearly proved. The Court cannot impute to her the dishonesty of not intending to pay for the goods which he purchased."

This view of the law is given by one of the ablest and most experienced equity judges now living, and upon a full review of all the English cases, and we must confess that it seems to us to have stripped the matter of much of its former complication and confusion, and to be far more satisfactory than any other view which we have yet seen. It would undoubtedly render the separate estate of a married woman liable upon her contracts of suretyship. And it is very obvious, that if she is held capable of assuming such obligations, in any form, so as to become a charge upon her separate estate, it is but an arbitrary requirement that the written contract, which by the Statute of Frauds is required to be in writing in order to bind her for the "debt of another," should go beyond the statute, and beyond the requirements of any positive law, and contain an express stipulation to the effect that she intends to bind her separate estate. This certainly looks like an invention to render the contract inoperative, and might lead simple-minded

suitors to suspect that, when that requirement is met, some other will be made. We suggest again the more satisfactory course of saying, at once, that Courts of Equity will not lend their aid to enforce a contract of suretyship against the separate estate of a married woman, in whatever form it may be made, or else of allowing such contracts of married women to stand upon the same general footing with their other contracts. I. F. R.

Supreme Court of Indiana.

JOHN REYNOLDS VS. THE BANK OF THE STATE OF INDIANA.

By the charter of the Bank of the State of Indiana, it was provided, that the bank should not at any time suspend or refuse payment in gold or silver, of any of its notes, bills, or obligations, &c., and that if it should neglect or refuse to do so, then the holder should be entitled to recover the amount with twelve per cent. interest. On the 1st of April 1862, the plaintiff demanded of a branch bank payment of its notes in coin, which was refused, but the amount tendered in United States legal tender Treasury Notes.

Held, (1st,) That the provision in the charter in question, did not amount to a restriction of the right of the bank to avail itself of the privilege of using anything else as money, as a tender, which the United States, by their laws, might legally declare to be such.

(2d), That Congress had *not* the Constitutional power to declare paper money a legal tender; but

(3d), That, considering that the Legislature and Executive Departments of the Federal Government had decided in favor of the existence of such a power, and what the consequences of an opposite decision at the present time by the court would be, they would hold the Treasury Notes to be a legal tender until the Federal Courts should determine otherwise.

Appeal from the St. Joseph's Circuit Court.

The opinion of the Court was delivered by

PERKINS, J.—On the first day of April, 1862, John Reynolds presented to the Branch at South Bend of the Bank of the State of Indiana, certain notes or bills issued by that Branch in the exercise of power conferred by the charter of the Bank, and, within the usual banking hours, demanded their redemption in coin. The Branch refused to redeem the notes in coin, but offered to redeem them in treasury notes, issued under late acts of Congress, and declared by act of Congress to be a legal tender. These